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SUBJECT: POLITICAL INFLUENCE IN UKRAINE'S MURKY JUDICIAL
SYSTEM

Classified By: Political Counselor Colin Cleary for reasons 1.4 (b,d).

Summary

1. (C) Ukrainians continue to view their judicial system as corrupt and open to political influence. The courts remain chronically underfunded, while judicial immunity and lifetime appointments for judges insulate their decisions. PM Tymoshenko is widely seen as controlling the Supreme Court, while President Yushchenko is believed to hold sway over the Constitutional Court. The Byzantine legal system, which provides for overlapping jurisdiction among various economic, administrative and criminal courts, has resulted in frequent "verdict shopping" among plaintiffs. Legal reform legislation that would increase the independence of the courts has languished in the Rada since April 2007. End Summary.

Courts Susceptible to Political Pressure

2. (SBU) Yushchenko and Tymoshenko, according to an account leaked to press, accused each other of controlling courts and the legal system in a divisive NSDC meeting in early February. Surveys conducted by the Razumkov Center, a respected political think-tank, have consistently shown that Ukrainians view their court system as corrupt and open to political pressure.

3. (SBU) Tetyana Fuley, a legal expert and coordinator for legal reform issues with Indiana University's Parliamentary development project, told us that there was little independence in the judiciary, and that politicians used the courts as an instrument to get what they want. Volodymyr Horbach, a co-founder of the Civic Constitution Committee, an independent group of NGO's and think-tanks, similarly stated that the courts were all about political pressure and control.

4. (SBU) Ihor Kohut, political analyst and chairman of the Agency for Legislative Initiatives, told us that there were two main issues that prevented an independent judiciary. The first was that the selection process for judges, especially at the Constitutional Court, was open to political pressure. One third of the Constitutional Court is appointed by the President, one third by the Rada and another third are submitted by the Congress of Judges--a judicial body.

5. (SBU) Generally, Judges for the Constitutional Court have served previously in other courts. For most other courts, nominees are put forth by Court Chairman of various courts and then approved by the High Council of Justice. The High Council of Justice is composed of approximately one third judges, one third presidential appointees, and one third Rada appointees. European standards state that judges should comprise 50 percent plus one of the selection body. According to Kohut, the heavy influence of the President and the Rada on the selection of judges stifles judicial independence. The selection process for judges is widely seen as based on

business and political connections rather than legal qualifications.

¶6. (SBU) Kohut said the second issue was the courts' reliance on financial support from the Rada. The funding, financing and logistics support for courts -- except for the Constitutional Court, the Supreme Court and some high specialized courts -- falls under the State Judicial Administration which answers to the Cabinet of Ministers. The result was that courts were chronically underfunded, and susceptible to political influence.

BYuT Controls the Pechersk and Supreme Courts

¶7. (C) Former Speaker of the Rada Arseniy Yatsenyuk, meeting with us March 5, contended that the Tymoshenko bloc controls a number of local and regional courts including the Pechersk Court in Kyiv. Kyiv's Pechersk court has within its geographic jurisdiction many of the government offices, including the Presidential Secretariat. Many cases dealing with government issues are petitioned to the Pechersk court. Yatsenyuk added that Tymoshenko also controls the Supreme Court.

¶8. (SBU) Most legal experts agree that the Supreme Court of Ukraine has strong links to the Tymoshenko bloc. Horbach and Fuley, in separate conversations, told us that the Chief Justice of the court, Vasyl Onopenko, is a former member of the BYuT faction and they believed that BYuT controlled the court. Petro Martynenko, a former Constitutional Court

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Judge, was initially reluctant to comment on the issue of political influence on courts. On further prompting, however, he told us that it was probably true that the Supreme Court was under the Tymoshenko bloc's control.

¶9. (SBU) Fuley told Emboffs that it was clear that the Supreme Court was tied to BYuT, because BYuT was blocking legal reform laws that reduced the power of the Supreme Court. The law on status of judges, and law on the judiciary have languished since April 2007 after they passed in the first reading. The laws, now combined in committee, establish a judicial discipline commission and reduce the number of Supreme Court Judges from 95 to 44. She stated that Our Ukraine-People's Self Defense (OU-PSD) and the Party of Regions were close to passing the laws last year. Fuley told us that the law might be reviewed by the Rada Justice Committee on March 18th. However, she saw little hope this year for Regions and OU-PSD to work together to pass the laws.

Yushchenko Petitions "His" Constitutional Court

¶10. (SBU) Yushchenko is believed to have more influence in the Constitutional Court. In addition to the six judges appointed by Yushchenko, one third of the court, two of the judges appointed by the Congress of Judges have close ties to the Victor Baloha, head of the Presidential Secretariat.

¶11. (SBU) Oleksandr Barabash, a lawyer who has presented cases to the Constitutional Court and is a specialist in election law told us that Yushchenko uses the court for tactical purposes. Barabash stated that Yushchenko submits petitions to the Constitutional Court on a regular basis to paralyze decisions made by the Cabinet of Ministers, even though the President knows that the petitions are without merit.

Unclear Jurisdiction Allows Verdict Shopping

¶12. (SBU) Petro Martynenko told us that it was not always easy to tell which judges belonged to which faction. Judges are immune from prosecution and may not be detained or arrested without the consent of parliament. During 2008 the High Council of Justice asked the Rada to dismiss only eight judges nationally for corruption. All eight were dismissed. Court decisions are also opaque and often not publicized making it difficult to see who benefits. Horbach noted that the law allows a plaintiff to file a complaint from any court. The lack of jurisdictional lines makes it easier for plaintiffs to shop around to find a sympathetic court or judge that they believe will issue a ruling in their favor.

Comment

¶13. (C) The Judicial system in Ukraine is clearly open to political influence and corruption. Political parties and rich plaintiffs have used their influence in the courts to obtain favorable results, or as a delaying tactic to forestall actions. Judges, with wide immunity, often owe their jobs to political factions. Further judicial reform is clearly needed, but will probably stay on the backburner in this presidential election year.

TAYLOR